

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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| -----X | |
| JOSE GALVEZ, ELIGIO HERNANDEZ, | : |
| DOUGLAS LUND, DONALD A. MORRIS, and | : |
| WILLIAM SCHAFER, | : |
| | : |
| Plaintiffs, | : |
| | : |
| -against- | : |
| | : |
| ASPEN CORPORATION and/or ASPEN | : |
| IRRIGATION INC. and/or MANAGEMENT | : |
| CONSULTING LABORERS and any related | : |
| corporate entities, DONALD ADKINS, RONALD | : |
| ADKINS, and THE CINCINNATI INSURANCE | : |
| COMPANY, | : |
| | : |
| Defendants. | : |
| -----X | |

MEMORANDUM AND ORDER
09-cv-4493 (WFK) (AKT)

WILLIAM F. KUNTZ, II, United States District Judge

On October 31, 2013, United States Magistrate Judge Kathleen Tomlinson issued a report and recommendation recommending that this Court dismiss Plaintiffs' complaint for lack of prosecution. Dkt. No. 46. For the reasons set forth below, Magistrate Judge Tomlinson's report and recommendation is ADOPTED in its entirety. Accordingly, the Court GRANTS Defendants' motion to dismiss this action.

A district court reviewing a report and recommendation "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge." 28 U.S.C. § 636(b)(1)(C); *see also McGrigs v. Killian*, No. 08 Civ. 6238, 2009 WL 3762201, at *2 (S.D.N.Y. Nov. 10, 2009) (Berman, J.). Under 28 U.S.C. § 636(b)(1) and Rule 72(b)(2) of the Federal Rules of Civil Procedure, parties may submit "specific written objections" to a magistrate

judge's report and recommendation "[w]ithin 14 days after being served with a copy of the recommended disposition." Fed. R. Civ. P. 72(b)(2); *see also* 28 U.S.C. § 636(b)(1). A party's "failure to object timely to a magistrate's report operates as a waiver of any further judicial review of the magistrate's decision." *F.D.I.C. v. Hillcrest Assocs.*, 66 F.3d 566, 569 (2d Cir. 1995) (internal quotation marks omitted).

Where, as here, a party does not object to a report and recommendation, "a district court need only satisfy itself that there is no clear error on the face of the record." *Reyes v. Mantello*, No. 00 Civ. 8936, 2003 WL 76997, at *1 (S.D.N.Y. Jan. 9, 2003) (Cote, J.) (internal quotation marks omitted); *see also Eisenberg v. New England Motor Freight, Inc.*, 564 F. Supp. 2d 224, 226 (S.D.N.Y. 2008) (Marrero, J.) ("A district court evaluating a Magistrate Judge's report and recommendation may adopt those portions of the . . . report to which no 'specific written objection' is made, as long as the factual and legal bases supporting the findings and conclusions set forth in those sections are not clearly erroneous or contrary to law.") (quoting Fed. R. Civ. P. 72(b)).

No objections to Magistrate Judge Tomlinson's report and recommendation have been filed. Accordingly, this Court has reviewed the report and recommendation for clear error only.

Magistrate Judge Tomlinson's report thoroughly reviewed the procedural history of this action. *See generally* Dkt. No. 46. This Court also observes that Plaintiffs have not filed any communication with this Court since November 9, 2012, when Plaintiffs filed their motion for attorney fees. *See* Dkt. Nos. 35–40. Plaintiffs did not object to Magistrate Judge Tomlinson's earlier report and recommendation, which recommended Plaintiffs' motion for attorney fees be denied, nor did Plaintiffs respond to Defendants' motion to dismiss this action for lack of

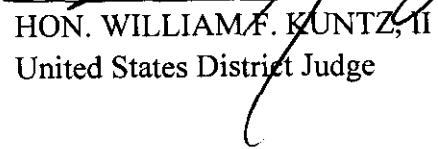
prosecution. Plaintiffs also failed to respond to Magistrate Judge Tomlinson's order of August 30, 2013 "directing Plaintiffs' counsel to notify the Court in writing by September 6, 2013 whether Plaintiffs intend to move forward with the case, withdraw the case, or take some other action." Dkt. No. 46 at 3 (citing Aug. 30, 2013 Dkt. Entry). Accordingly, Magistrate Judge Tomlinson recommended dismissal of this action pursuant to Rule 41(b) of the Federal Rules of Civil Procedure, which permits a district court "to dismiss a complaint for 'failure to comply with a court order, treating the noncompliance as a failure to prosecute.'" *Id.* at 3 (quoting *Simmons v. Abruzzo*, 49 F.3d 83, 87 (2d Cir. 1995)); *see also* Fed. R. Civ. P. 41(b). This Court finds no clear error in this analysis, or in the report and recommendation overall.

For the foregoing reasons, this Court ADOPTS Magistrate Judge Tomlinson's report and recommendation in its entirety, and therefore GRANTS Defendants' motion to dismiss this action for lack of prosecution. The Clerk of the Court is ORDERED to close this action.

SO ORDERED

Dated: Brooklyn, New York
November 21, 2013

s/WFK


HON. WILLIAM F. KUNTZ, II
United States District Judge